

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Jan 26th 2021

Brooklyn Pro Se Office
via dropbox

HARRY KLEINBART, STEVEN
KLEINBART, SAMUEL KLEINBART

CIVIL ACTION
File No.: 21-CV-695

21-CV-695

KOMITEE, J.
BLOOM, M.J.

Plaintiffs,

- against -

SOLOMON KLEINBART, THE
BELVEDERE ASSISTED LIVING HOME,
STEVEN SCHONBERGER, individually and
as Chief Executive Officer of THE
BELVEDERE ASSISTED LIVING HOME,
CRYSTAL DOE, individually and as agent of
THE BELVEDERE ASSISTED LIVING
HOME, JOHN DOES 1-10, JANE DOES 1-
10, ABC ENTITIES 1-10,

COMPLAINT;
MOTION FOR ISSUANCE OF
TEMPORARY RESTRAINING
ORDER;
MOTION FOR REQUEST OF
HEARING FOR
PRELIMINARY INJUNCTION;
PLAINTIFFS DEMAND TRIAL BY
JURY

Defendants.

Harry Kleinbart, Steven Kleinbart and Samuel Kleinbart, pro se, respectfully allege:

PRELIMINARY STATEMENT

1. This is a civil rights action, pursuant to 42 U.S.C. § 1983 and § 1985. In this action, Plaintiffs seek damages, declaratory, equitable and injunctive relief to redress the deprivation of rights secured to them under the First, Fourth and Fourteenth Amendments of the United States Constitution. Plaintiffs also seek damages for the deprivation of their rights under New York State law.

2. Plaintiff Harry Kleinbart has been abused and neglected by Defendants, causing him to become immobile as well as causing him to endure physical harm, pain and emotional distress. Plaintiff Harry Kleinbart is forced by Defendants to remain in The Belvedere Assisted

Living Home in Brooklyn NY, thereby denying him proper medical treatment. Such continued actions will likely result in irreparable harm or even premature death of Plaintiff Harry Kleinbart unless immediate injunctive relief is granted.

3. Plaintiffs, pro se, hereby move this court to issue a Temporary Restraining Order, pursuant to Fed. R. Civ. P. Rule 65(b) restraining and enjoining all Defendants, their officers, employees, successors, attorneys and agents and all those in active concert or participation with them from seizing and/or detaining Harry Kleinbart from permanently leaving his current residence at The Belvedere located at 5110 19th Ave. Brooklyn, NY 11204 #203 and from being admitted to the Northern Metropolitan located at 225 Maple Ave. Monsey, NY 10952 to receive proper medical treatment, pending a hearing and determination of Plaintiff's motion for a preliminary injunction.

4. Plaintiffs further move this court to issue a Temporary Restraining Order enjoining all Defendants their officers, employees, successors, attorneys and agents and all those in active concert or participation with them, except for Harry Kleinbart's two (2) children Plaintiffs Steven and Samuel Kleinbart and their spouses Sarah and Shulamit C. Kleinbart respectfully, from taking any active role in the continued care and/or decision making of Harry Kleinbart.

5. Plaintiffs further move this court for a Temporary Restraining Order enjoining all Defendants from detaining any and all of Harry Kleinbart's personal possessions, documents, medical records and financial records from Harry Kleinbart and his children Steven and Samuel Kleinbart and their spouses Sarah and Shulamit C. Kleinbart respectfully, pending a hearing and determination of Plaintiffs' motion for a preliminary injunction. Plaintiffs further move this court for an order setting a date for such hearing.

JURISDICTION

Jurisdiction is conferred upon this court by 28 U.S.C. § 1343, which provides for original jurisdiction over all actions brought pursuant to 42 U.S.C. § 1983 and § 1985, 28 U.S.C. § 1331, which provides for original jurisdiction over all cases brought pursuant to the Constitutional laws of the United States and 28 U.S.C. § 1367 which provides supplemental and original jurisdiction over state, common law and personal injury claims. The court has jurisdiction over the Defendants pursuant to 28 U.S.C. § 1391 as all Defendants live in Kings County, New York as well as the events giving rise to this action occurred in Kings County, New York. The court has pendent jurisdiction over Plaintiffs' State law claims.

PARTIES

1. Plaintiff Harry Kleinbart, also known as Hershel Kleinbart, also known as Osher Tzvi Kleinbart, the son of Rabbi Shimon Kleinbart of blessed memory, ("Harry Kleinbart" or "Harry") resides at The Belvedere Assisted Living Home at 5110 19th Ave. #203 Brooklyn, NY 11204. Harry Kleinbart has two (2) adult sons, Steven Kleinbart and Samuel Kleinbart.

2. Plaintiff Steven Kleinbart, also known as Shimon Kleinbart, ("Steven Kleinbart" or "Steven") is a son of Harry Kleinbart. Plaintiff Steven Kleinbart is married to Sarah N. Kleinbart and reside at 31 Dana Rd. Monsey, NY 10952.

3. Plaintiff Samuel Kleinbart, also known as Shmuel S. Kleinbart, ("Samuel Kleinbart" or "Samuel") is a son of Harry Kleinbart. Plaintiff Samuel Kleinbart is married to Shulamit C. Kleinbart and reside at 3819 Shannon Rd. Cleveland Heights, OH 44118.

4. Defendant Solomon Kleinbart also known as Shlomo Kleinbart ("Solomon Kleinbart" or "Solomon") is a brother of Plaintiff Harry Kleinbart who resides at 1563 E. 18th

Street Brooklyn, NY 11230. Solomon Kleinbart has voluntarily acted as Harry Kleinbart's primary caretaker since on or about 2015 to date.

5. Defendant The Belvedere ("Belvedere") is an Assisted Living Facility located at 5110 19th Ave. Brooklyn, NY 11204 at which Harry Kleinbart currently resides in room #203 of the building since on or about January 1st 2018.

6. Defendant Steven Schonberger, also known as Shabsy Schonberger, is the chief executive officer (CEO) of The Belvedere. Defendant Schonberger resides at 60 S. Parker Dr., Monsey, NY 10952. At all times herein Defendant Steven Schonberger had the responsibility to oversee that all agents and employees working at The Belvedere act in accordance with both State and Federal law.

7. Defendant Crystal Doe is the Administrator at The Belvedere. At all times herein Defendant Crystal Doe had the responsibility to act according to State and Federal law. [Will obtain last name and home address upon service and/or discovery].

FACTS

1. Plaintiff Harry Kleinbart lived together with his wife Cecelia Kleinbart since their marriage on March 24th 1981.

2. Harry Kleinbart suffered a stroke in March 1999. Although Harry Kleinbart mostly recovered and became mostly independent, he still required occasional assistance, which his wife, Cecelia Kleinbart provided.

3. From 2007 to 2015 Harry and his wife Cecelia would often stay by their children and their children would often come to stay by them.

4. On or about March 2012 Harry Kleinbart and his wife Cecelia Kleinbart moved from their apartment at 904 56th St. Brooklyn NY 11219 to 1415 Ave. O Apartment 2J Brooklyn, NY 11230.

5. From 2007 to 2015 Harry and Cecelia Kleinbart would spend most weekends and holidays together with their children Steven and Sarah Kleinbart.

6. On January 19th 2015 Cecelia Kleinbart suffered a stroke and cardiac arrest, which required hospitalization. Harry Kleinbart continued living in his home on his own, with his children checking in on him frequently.

7. After Cecelia Kleinbart's hospitalization, Harry Kleinbart took care of most of his own needs with the assistance of a health aid for tasks which Harry had difficulty performing on his own such as bathing, shopping and meal preparations.

8. Harry wanted to continue spending weekends and holidays at Steven's home, as well as by his son Samuel's home by Steven and Sarah taking Harry there. But when Solomon found out, he would scream at Steven and Sarah Kleinbart to get away from Harry and would not allow Harry to visit any of his children, especially not for weekends and holidays.

9. Solomon then forced Harry to spend the weekends and holidays by one of Harry's three siblings, which Harry would go to in rotation. These siblings were Harry's brother Abraham Kleinbart located at 1521 57th St Brooklyn, NY 11219, Harry's sister Rivka Steinberg located at 1180 E. 14th Street Brooklyn, NY 11230 and Harry's brother Defendant Solomon Kleinbart located at 1563 E. 18th Street Brooklyn, NY 11230.

10. From the time Harry's wife Cecelia was hospitalized in 2015 to the time Solomon admitted Harry to the Belvedere in 2018, Solomon would visit Harry in Harry's home a few times a week.

11. Whenever Solomon would find Steven and Sarah Kleinbart and their daughter Hanna-Rikki Kleinbart at Harry's home, Solomon would always scream at them to leave immediately. Solomon refused to allow Harry to read books to or play with his granddaughter Hanna-Rikki Kleinbart.

12. Despite Solomon's refusal for Harry to see his children and grandchildren, at times, Harry would secretly travel on his own during the week to Steven's home in Brooklyn. Harry made sure to return to his own home before Solomon's expected arrival time to avoid Solomon from finding out what transpired and being reprimanded by Solomon.

13. This practice of Harry Kleinbart remaining home for the weekdays and staying by his siblings for weekends and holidays continued for approximately three (3) years.

14. After approximately three (3) years, Solomon Kleinbart admitted Harry Kleinbart to The Belvedere Assisted Living Facility located at 5110 19th Avenue Brooklyn, NY 11204 on or about December 1st 2017 for a one-month trial, while Harry Kleinbart continued his primary residence at 1415 Ave. O. Apt. 2J Brooklyn, NY 11230.

15. Solomon Kleinbart stated to Samuel Kleinbart before admitting Harry Kleinbart to The Belvedere that Solomon Kleinbart is only admitting Harry Kleinbart to The Belvedere for a one-month trial and that a long-term residency at The Belvedere for Harry Kleinbart would be discussed at the end of the one-month trial.

16. Harry Kleinbart's one-month trial at The Belvedere proved to be practical for Solomon Kleinbart and his siblings. This was because Solomon and his siblings believed that Harry Kleinbart was doing well as long as he received meals, laundry, and religious services, all within the same building.

17. However, this was contrary to Harry Kleinbart's objections to remain at his home at 1415 Ave. O Apt. 2J Brooklyn, NY 11230 where he felt happy and independent and his basic necessities were already being met by his health aid, in addition to his children and their spouses. Whereas, in The Belvedere, Harry felt depressed and that he lost his independence.

18. Harry Kleinbart reported to his children Steven and Samuel Kleinbart at the end of the month (on or about December 26th 2017) as well as on numerous subsequent occasions that Harry Kleinbart was unhappy being a resident of the Belvedere and would much rather remain at his home at 1415 Ave. O Apt. 2J Brooklyn, NY 11230. Harry stated that this was regardless of the inconveniences of living alone with only a part time health aid, needing to walk to a synagogue daily and the need for others to check in on him from time to time.

19. Samuel Kleinbart in turn expressed Harry Kleinbart's objections to Solomon Kleinbart. Solomon explained to Samuel that Harry's desire to return home and live independently was impractical and also, it was more convenient for Solomon that Harry remain a resident of The Belvedere for the time being.

20. Disregarding Harry Kleinbart's personal opinions, on or about January 1st 2018, Solomon Kleinbart forced Harry to be admitted as a resident of The Belvedere Assisted Living Home located at 5110 19th Avenue Brooklyn, NY 11204 by signing the necessary documents on behalf of Harry Kleinbart. Harry Kleinbart was then assigned to Room #203.

21. From when Solomon admitted Harry to the Belvedere in 2018 to date, Solomon constantly impeded Harry from being with his children and grandchildren. Solomon refused to allow Harry to visit Harry's son Steven's home. Whenever Harry insisted on flying or getting a ride to his son Samuel and his family in Cleveland Ohio, Solomon refused to allow Harry to go.

22. On or about December 2018 Harry Kleinbart stated to Solomon Kleinbart as well as to Steven Kleinbart and Samuel Kleinbart that he fell down while in the Belvedere and was afraid of falling again.

23. Steven and Sarah visited Harry in the Belvedere and questioned Harry regarding his fall and the weakness in his legs. Solomon happened to be there at the time and kept on taking over the conversation and would not let Harry give over any information to Steven or Sarah Kleinbart.

24. Samuel Kleinbart then questioned his father Harry Kleinbart over the phone regarding his fall and the weakness in his legs to which it became apparent that Harry Kleinbart was indeed able to walk independently, but was nervous to do so out of lack of stability as his legs were becoming stiff. Samuel Kleinbart explained to his father Harry Kleinbart, who at the time was using a quad-cane, that even while using a cane, Harry needs to be able to maintain his balance in between steps while lifting the cane and placing it back on the ground. Therefore, due to Harry's nervousness, a cane does not provide the stability he currently requires. In addition, stiffness comes from lack of walking which is part of a vicious cycle as Harry felt unstable walking and therefore walked less, thereby causing the stiffness to increase.

25. Samuel Kleinbart explained to Harry Kleinbart that Harry at this point requires the constant support of a walker and not just a cane, together with proper therapy, to prevent his legs from becoming stiff.

26. Samuel Kleinbart spoke to Solomon Kleinbart and explained to him that Harry Kleinbart's weakness in his legs was due to nervousness which caused Harry Kleinbart's legs to become stiff and for him to feel unbalanced even while using a cane, coupled with the fact that Harry Kleinbart was not receiving enough therapy, all of which created a vicious cycle.

27. Harry Kleinbart though, was unable to use a standard walker due to his stroke in 1999 which prevented him from the proper usage of his right hand. Samuel Kleinbart therefore performed research and found two models of walkers for stroke victims with one handle in the middle, one which was \$218 and readily available and another for approximately \$500 and difficult to procure.

28. There were many side walkers available as well, for a relatively low price, but they required lifting the walker between steps which would then be no different from a cane, if not worse. This would only exacerbate his vicious cycle of stiffness in his legs, feeling imbalanced and not walking enough.

29. Samuel Kleinbart called Solomon Kleinbart to discuss his opinions about Harry Kleinbart's stability and how he required a walker over a cane and the two available walkers.

30. Solomon Kleinbart said he would need to bring Harry Kleinbart to doctors to examine him to be able to decide which one, if any, Harry Kleinbart should use.

31. Samuel Kleinbart explained to Solomon Kleinbart that it does not require a doctor but rather common sense.

32. Solomon Kleinbart nevertheless refused to purchase any walker for Harry Kleinbart without first discussing it with Harry Kleinbart's doctors.

33. Solomon then called Steven and Sarah Kleinbart to ask them if it was crucial for Harry to have a walker. When they began telling Solomon that it was crucial, Solomon immediately hung up the phone.

34. Approximately three (3) months passed and Solomon Kleinbart had still not discussed Harry Kleinbart's need for a walker with Harry's doctors. As a result, Solomon Kleinbart did not purchase any walker for Harry Kleinbart.

35. During these months, Harry Kleinbart's nervousness regarding his stability increased, as well as the stiffness in his legs, causing his walking ability to steadily deteriorate.

36. In March 2018, Samuel Kleinbart realized that Harry Kleinbart's nervousness regarding his stability was constantly increasing, together with the stiffness in his legs. As a result, Harry Kleinbart's walking ability continuously deteriorated as well as his chances of falling increased.

37. Steven and Samuel Kleinbart also realized that Solomon Kleinbart had not taken any action to discuss with Harry Kleinbart's doctors the need for a walker. Solomon did not perform any further research in trying to find a proper model to assist Harry Kleinbart.

38. On March 25, 2019 Samuel Kleinbart purchased the \$218.00 stroke walker for Harry Kleinbart and had it shipped to Harry Kleinbart at The Belvedere.

39. In April 2019, Samuel Kleinbart traveled from Cleveland, Ohio and visited his father Harry Kleinbart at The Belvedere and taught Harry how to use the walker. This was the first time Harry used the walker.

40. Harry Kleinbart instantly felt more stable with the new walker and walked around the building comfortably for approximately 30 minutes.

41. As Harry Kleinbart's legs were still stiff from lack of therapy and minimal walking over the past four (4) months, Harry Kleinbart required a few additional hours of supervision while using the walker, mainly for turning. As Samuel Kleinbart needed to return home, he was unable to assist Harry Kleinbart with the additional supervision.

42. Samuel Kleinbart requested Solomon Kleinbart, who would often visit Harry Kleinbart at The Belvedere, to continue supervising Harry while using the new walker to allow Harry to regain his stability and stop regressing in his walking.

43. Solomon Kleinbart ignored Samuel's request and did not supervise Harry Kleinbart while using the walker to regain his stability, nor did Solomon request any of the staff at The Belvedere to supervise Harry while using the walker.

44. After Harry receiving his walker, Steven and Sarah Kleinbart attempted to get Harry into full physical therapy to improve his mobility, but Solomon refused to allow it.

45. When Steven and Sarah Kleinbart asked Solomon if he supervised Harry using the walker Solomon responded that Harry is in an assisted living home and they take care of him.

46. Steven Kleinbart then asked his father Harry if Harry was using the walker at The Belvedere, to which Harry replied that he was not using it because no one lets him use it.

47. As a result, Harry Kleinbart's balance and stability continued to regress and the stiffness in his legs continued to increase.

48. On October 17 2019 Samuel Kleinbart again visited Harry Kleinbart, together with Steven Kleinbart. Upon arriving, Steven and Samuel both witnessed how Harry Kleinbart's balance and stability had greatly declined since April 2019. Harry told Steven and Samuel that he was nervous to walk because he was afraid of falling.

49. Steven and Samuel then supervised Harry in using the single handled walker and Harry independently walked around the hallway at The Belvedere.

50. As Harry's legs were stiff, he was only able to walk for approximately ten (10) minutes before becoming weary.

51. Besides these two times in April and October 2019 with Steven and Samuel, Harry Kleinbart never received any assistance or supervision while using his walker. As a result, his balance and stability steadily decreased and it became increasingly difficult for him to walk.

52. By March 2020 Harry Kleinbart's mobility had deteriorated to the point that he was barely able to walk, even with assistance.

53. On or about May 2020, Harry Kleinbart became completely immobile and wheelchair bound.

54. Steven and Samuel only found out about Harry's complete immobility on July 12, 2020 when they came to visit him at The Belvedere to inform him that his wife Cecelia Kleinbart was very sick and in the hospital.

55. Steven Kleinbart questioned The Belvedere numerous times why Harry became completely immobile but they always refused to answer him.

56. On the following day July 13th 2020 Cecelia Kleinbart passed away.

57. Solomon tried to convince Samuel not to take his father Harry Kleinbart to his wife's funeral. Samuel did not give in.

58. Harry Kleinbart was brought to the funeral by his children, Steven, Samuel, and Steven's wife Sarah

59. When arriving at The Belvedere to bring Harry Kleinbart to the funeral, Steven and Sarah Kleinbart informed the staff at The Belvedere that Harry Kleinbart will be permanently leaving The Belvedere in the near future.

60. Before the funeral began, Solomon approached Harry and offered to drive him back to The Belvedere in order for Harry not to be at the funeral. Harry adamantly refused, as Harry wanted to attend the funeral.

61. After the funeral, Harry Kleinbart was going to be driven back to the The Belvedere by an independent driver Eli Gluck, but Harry refused to return to The Belvedere, stating to Eli Gluck in front of his children Steven, Samuel and Steven's wife Sarah that Harry

Kleinbart was being mistreated at The Belvedere and felt as though he was in jail. A sworn Affidavit by Eli Gluck confirms the details of this conversation, a true copy of which is attached hereto as EXHIBIT #1.

62. Only after much convincing by Harry Kleinbart's children and by Eli Gluck that Harry's return to The Belvedere would only be temporary, did Harry Kleinbart reluctantly return to The Belvedere, but insisted that he be 'let out of jail' immediately.

63. On July 13th 2020 Steven and Samuel also became aware that Harry Kleinbart was catheterized.

64. On Friday July 17th 2020, Harry Kleinbart stated to his son Samuel that he wants to be able to walk again, retain continence control, be free to make his own decisions and be assisted exclusively by his children Steven and Samuel together with their spouses Sarah and Shulamit C. Kleinbart, respectfully, and not by Solomon Kleinbart.

65. Harry Kleinbart told Steven and Samuel that since their mother, his wife had passed away, Harry would like to move in with his children and grandchildren.

66. Steven and Samuel explained to Harry that he was welcome to move in with them. But for practical purposes, Harry must first regain his mobility and continence control through specialized therapy.

67. Samuel Kleinbart further explained to Harry that for him to be admitted to such a facility and eventually move in with his children, he will need to administer a Power Of Attorney and Health Care Proxy to his children Steven and Samuel as well as possibly to their spouses.

68. Steven and Samuel asked Harry if he was willing to administer a POA and Health Care Proxy to his children Steven and Samuel and possibly to their spouses as well to which Harry Kleinbart agreed.

69. On Tuesday July 21st 2020 Harry Kleinbart administered a POA and Health Care Proxy to his son Samuel as the primary agent, and to his son Steven and Steven's wife Sarah Kleinbart as successor agents.

70. On or about July 20th 2020 Samuel asked Solomon for any and all family records in Solomon's possession belonging to Harry Kleinbart and/or his children Steven and Samuel. A few days later Solomon reported to Samuel that Solomon had searched his house and could not find any such items or documents.

71. Upon information and belief Solomon had lied to Samuel, as Solomon had maintained much control over Harry Kleinbart's finances since 1992 and many of Harry's financial and/or medical records would be mailed directly to Solomon.

72. Steven and Samuel researched and found a Skilled Nursing Facility by the name of the Northern Metropolitan located at 225 Maple Ave. Monsey, NY 10952 which specializes in advanced therapy to get wheelchair-bound individuals to walk again, to help catheterized individuals relearn personal continence and to avoid unnecessary surgeries.

73. Samuel Kleinbart spoke to Crystal Doe, Administrator at The Belvedere, to discuss Harry Kleinbart's need and desire to leave The Belvedere and be admitted to the Northern Metropolitan. To do so, Harry Kleinbart needed his medical records located at The Belvedere to be faxed to Northern Metropolitan to create a PRI.

74. Crystal Doe told Samuel Kleinbart that she would fax over Harry's medical records to Northern Metropolitan. But before she does so, she must first have a copy of Harry Kleinbart's Health Care Proxy faxed to her. Samuel Kleinbart then faxed over Harry Kleinbart's Health Care Proxy to Crystal Doe at The Belvedere.

75. Samuel then called back Crystal Doe at The Belvedere for several days without getting through and left several messages but did not receive any call back.

76. At the same time, Steven called Crystal Doe, as well as came down to The Belvedere, several times. Crystal never returned any calls and only once did Crystal ever come out to speak to Steven. Even this time, when Steven requested to see his father, Crystal refused Steven the right to see his father Harry for the illogical reason that since Solomon Kleinbart signed Harry in, only Solomon can sign Harry out.

77. In addition, Crystal stated that no one at The Belvedere had access to any of Harry Kleinbart's records.

78. After several days of trying, Samuel Kleinbart finally got through to Crystal Doe on the phone who told Samuel that she cannot have any medical records sent over to Northern Metropolitan because Harry Kleinbart's primary care physician, Dr. Bules, was in Israel for a month and he was the only one who had access to Harry Kleinbart's medical records. Crystal Doe Stated that no one else at The Belvedere had any access to Harry Kleinbart's records.

79. In addition, Crystal added, Solomon signed Harry in, Solomon signs Harry out ('Solomon signs him in, Solomon signs him out.')

80. A week later Samuel Kleinbart spoke with Solomon who stated that Harry had just seen his primary care physician Dr. Bules the day before. Solomon Kleinbart was not aware of Dr. Bules being in Israel.

81. Upon information and belief, Crystal Doe had lied to both Steven and Samuel Kleinbart by stating that Dr. Bules was in Israel for a month and that no one in the entire building had access to Harry Kleinbart's records. Crystal had acted in conspiracy with Solomon Kleinbart to detain Harry Kleinbart from permanently leaving The Belvedere.

82. Harry Kleinbart was accepted into the Northern Metropolitan on August 13th 2020 for long-term care.

83. Samuel informed Solomon about Harry Kleinbart's desire to permanently leave The Belvedere and that Crystal Doe, the administrator at The Belvedere, stated to Samuel that only Solomon Kleinbart can sign out Harry Kleinbart. Samuel also informed Solomon about Harry Kleinbart's acceptance to the Northern Metropolitan.

84. Solomon told Samuel Kleinbart that Harry was in middle of an emergency procedure and therefore could not travel until Harry had a surgery. Solomon stated to Samuel that Harry Kleinbart's bladder was backed up and required constant catheterization until Harry would undergo a surgery to correct the problem.

85. Samuel questioned Solomon Kleinbart about the nature of Harry's emergency situation and the nature of the surgery, to which Samuel discovered that the surgery was merely a cystoscopy. A cystoscopy is a diagnostic testing of the bladder which is categorized as a "surgery" due to its invasiveness and its ability to remove bladder stones, if present. Harry Kleinbart's catheterization was only to last until he would have a cystoscopy performed.

86. Samuel told Solomon that a cystoscopy is not a dangerous procedure and Harry can still go to the Northern Metropolitan for therapy while he is waiting for his cystoscopy.

87. In addition, the Northern Metropolitan is medically equipped to deal with individuals on catheters whereas The Belvedere is not.

88. Solomon Kleinbart nevertheless refused to allow Harry Kleinbart to leave The Belvedere and be admitted to Northern Metropolitan to receive therapy and proper medical care.

89. Rather, Solomon continuously told Samuel that Harry was in the middle of an "emergency procedure" just as if one were "in middle of an operation" in which one cannot stop.

When Samuel asked Solomon in what way was Harry “in middle” of a procedure, Solomon responded that Harry already had an MRI done.

90. Despite Solomon stating that Harry Kleinbart’s waiting for a cystoscopy was considered “in middle of an emergency procedure,” nevertheless, Harry Kleinbart’s cystoscopy was cancelled and rescheduled several times for various reasons. One time it was cancelled because the doctor who was supposed to perform the cystoscopy had to perform an emergency surgery and therefore had to reschedule all his patients from during that time. Had Harry Kleinbart’s cystoscopy truly been an emergency, it should have been performed immediately and caused other patients to have their appointments cancelled.

91. Samuel Kleinbart spoke to Solomon on or about August 13th 2020 after Harry Kleinbart’s cystoscopy was postponed due to the doctor having to perform an emergency surgery. Samuel told Solomon that Harry needed to leave The Belvedere immediately because if he does not, Harry may completely lose his mobility.

92. In addition, getting intense therapy in a Skilled Nursing Facility is not a contradiction to also getting a cystoscopy. Northern Metropolitan allows patients to go to their private doctors or surgeons if they so desire, even if it means traveling from Monsey NY to Brooklyn NY. In addition, Northern Metropolitan would arrange for a cystoscopy for Harry Kleinbart if so needed, to receive it within a maximum of 7-10 days of his arrival, unlike in Brooklyn where he may have to wait indefinitely.

93. Samuel Kleinbart also explained to Solomon that Harry had recently begun having abdominal spasms which Samuel believed were a direct cause of his sitting in an inferior wheelchair provided by Solomon Kleinbart that did not have any foot rests or a proper back. As

a result, Harry Kleinbart constantly sat in an awkward position and constantly held his feet in the air, putting persistent strain on his abdominal muscles which most likely caused his spasms.

94. Solomon Kleinbart refused to listen to Samuel but did propose Harry be brought to the emergency room to be checked out as to why his feet are not working properly and why he was getting abdominal spasms.

95. Samuel told Solomon that if Harry will be brought to the emergency room, it may be considered that Solomon Kleinbart abused Harry Kleinbart.

96. On or about August 13th 2020 Solomon told Samuel that Harry could not leave The Belvedere for yet another reason because Harry had scheduled doctors' appointments in Brooklyn.

97. Samuel responded to Solomon that getting therapy to be able to relearn how to walk is not a contradiction to having doctors' appointments and every day that Harry remains at The Belvedere, he is regressing and may become permanently immobile as well as may acquire new medical conditions as a result of Harry's being neglected.

98. Solomon refused to listen to Samuel and kept on insisting that Harry remain in The Belvedere while waiting for Harry's doctors' appointments in Brooklyn.

99. The Belvedere refused to recognize the Power of Attorney and Health care Proxy which Harry Kleinbart had legally administered to his sons Steven and Samuel Kleinbart.

100. In addition, The Belvedere was not licensed to take care of patients on catheters. As such, The Belvedere violated their license by denying Harry Kleinbart from receiving necessary medical treatment. Samuel Kleinbart again called Crystal Doe, the administrator at The Belvedere, numerous times but could not get through and Crystal Doe would not return the calls.

101. Being that Crystal Doe would not answer the phone or return messages to Steven or Samuel, Steven and Samuel therefore went to The Belvedere in person on 8/19/2020 to speak to Crystal Doe.

102. Upon arrival, Steven and Samuel first asked to visit Harry Kleinbart by having him brought outside, as was the practice of The Belvedere during the COVID-19 pandemic. Harry Kleinbart had seen his children several times outside The Belvedere in this manner, including the previous week. Steven and Samuel had intended to first see their father and then speak to Crystal Doe.

103. Crystal Doe came out of The Belvedere and told Steven and Samuel that the building was back on lockdown and that no visitors were allowed into the building as well as no residents were allowed to go outside and that Solomon Kleinbart was the one who moved Harry Kleinbart into The Belvedere and is therefore the only one who can allow Harry Kleinbart to leave. So if Steven and Samuel want Harry to leave the Belvedere, they must tell Solomon to give the Belvedere a 30-day notice and tell The Belvedere where Harry is going to and then Solomon can sign Harry out.

104. This statement regarding Solomon Kleinbart signing out Harry Kleinbart was part of Crystal's same sentence that the Belvedere was on lockdown and neither Steven nor Samuel had yet mentioned to Crystal anything about signing out Harry Kleinbart.

105. Upon information and belief this lockdown was fictitious, as the previous week there was no lockdown in place and the following day when an individual called The Belvedere to speak to one of the residents, the front desk told that individual that the resident was out shopping.

106. Upon information and belief, there was a conspiracy between Solomon Kleinbart and The Belvedere to assure that Steven and Samuel do not get to see their father Harry Kleinbart and that Harry does not get to see his children.

107. On October 13th 2020 Steven went to The Belvedere to visit his father. Upon arrival, Steven was again told by the administrator Crystal Doe that The Belvedere was on lockdown and that no residents were allowed out of the building.

108. Upon information and belief this lockdown was fictitious and was perpetrated by a conspiracy between Solomon Kleinbart and The Belvedere to deny Steven the right to see his father and to deny Harry the right to see his son. Again, there is a concerted effort to violate Harry's fundamentally secured liberty and privacy rights.

109. After Harry's wife Cecelia had been admitted to the hospital in 2015, Harry lived by himself in his apartment at 1415 Ave. O Apt. 2J Brooklyn, NY 11230. Samuel purchased a simple cellular phone for Harry which was specially designed for senior citizens and easy to use. Harry was thus easily reachable as well as was able to call his children and grandchildren at will.

110. After Solomon signed Harry into The Belvedere, Solomon instead purchased a smartphone for Harry that was designed for senior citizens and instructed Samuel to cancel the simple phone Samuel had purchased for his father.

111. Harry never understood how to use his new smartphone, despite its relatively easiness and despite numerous instructions. Harry did not know how to use computer-like devices. In addition, due to Harry's stroke in 1999, only his left hand worked and he could not hold the phone in one hand and press the buttons with his other hand. As a result, Harry often missed phone calls and had much difficulty calling people back.

112. Samuel explained to Solomon numerous times that Harry could not properly call people or receive calls because Harry could never figure out how to use his smartphone. Harry needed to reinstate his old simple phone so that his children can get through to him and for Harry to get through to his children.

113. Solomon ignored Samuel's concerns and simply stated that Harry just needs to learn how to use a smartphone.

114. Since on or about September 18th 2020 to date, Harry's cell phone has always been off and went straight to the voicemail. As a result, it was impossible to get through to Harry.

115. Upon information and belief, Solomon, who maintains full control over Harry's cell phone, was the one who turned off his cell phone to prevent Harry's children from getting through to him and to prevent Harry from getting through to his children.

116. Steven and Samuel called their father Harry Kleinbart at The Belvedere front desk numerous times, requesting for the call to be transferred to their father's room phone, but were unable to get through for seven (7) weeks from September 19th 2020 to November 7th 2020.

117. During these seven (7) weeks, Steven came to The Belvedere at least once a week to see his father Harry. The Belvedere always denied Steven the right to see his father.

118. However, during these seven (7) weeks, community members came to see Harry at The Belvedere and were allowed to see Harry outside the building in accordance with COVID-19 restrictions.

119. On November 7th 2020 Samuel called The Belvedere numerous times to speak to his father Harry without success. Samuel then told the secretary at the front desk that he believes

Harry's room phone was placed out of his reach, both from his bed and from his wheelchair. Therefore, an aid should be sent to assure that Harry's room phone is placed within his reach.

120. An aide from the Belvedere was sent to Harry's room where it was discovered that indeed Harry's room phone was placed out of his reach. The aid then placed Harry's room phone next to him and his children were able to speak to him for the first time in seven weeks.

121. Upon information and belief Solomon and The Belvedere worked in conspiracy to assure that Harry's room phone be placed out of his reach to prevent Harry's children from getting through to their father and to prevent Harry from getting through to his children.

122. Samuel had spoken to Solomon numerous times in July and August 2020 to allow Harry Kleinbart to be admitted to a skilled nursing facility and receive proper therapy to regain mobility and personal continence.

123. Solomon assured Samuel that Solomon would allow Harry Kleinbart leave The Belvedere and be admitted to the Northern Metropolitan. Solomon then stated that he feels that Harry Kleinbart "is in good hands" by Samuel taking care of his father.

124. Despite all of Solomon's assurances, Solomon has nevertheless refused Harry the right to leave the Belvedere by refusing to sign any necessary forms and refused to allow Harry to be under the care of his children."

125. Harry Kleinbart spoke to Crystal Doe on one or more occasions beginning on or about December 2020 stating that he wants to leave the Belvedere, as Harry had the legal right to sign himself out. Crystal Doe however, refused to allow Harry to leave the Belvedere.

126. The Belvedere has acted illegally by not allowing Harry Kleinbart to sign himself out, as Harry Kleinbart is fully cognizant and therefore has the legal right to sign himself out.

127. In addition, The Belvedere acted illegally by refusing to allow Harry Kleinbart's children who maintain a Power Of Attorney and Health Care Proxy for Harry Kleinbart, to sign him out of the Belvedere.

128. Defendant Belvedere secures state and federal funding for maintaining its residents/patients in a purported quality care environment. It is of the essence that the Belvedere maintains full capacity to maximize funding from the federal government and state government for profit and gain.

129. Defendant Belvedere receives funding from New York State's Assisted Living Program (ALP), N.Y. Social Services Law, Section 461-l[5], which pays the cost of services in licensed assisted living residences throughout the state for qualified individuals. Participants must require a high level of care, typically equivalent to the level of care in a nursing home.

130. The ALP is governed by 18 NYCRR parts 494 and 505.35. ALP reimbursement regulations can be found in Title 10 NYCRR part 86-7. An ALP must have a home care component, which is typically satisfied by having a licensed home care services agency or LHCSA. Regulations for LHCSAs are found in Title 10 NYCRR, parts 765 to 766.

131. The New York State ALP program is a hybrid structure of Medicaid and non-Medicaid funding that allows it to pay for both assisted living care services and the room and board costs of assisted living and senior participants.

132. Defendant Belvedere receives federal Medicare and Medicaid funding through a large portion of its patients/residents who are on Medicare and/or Medicaid.

133. Private-pay assisted living communities now may apply for funding under the Provider Relief Fund phase 2 general distribution allocation, from the U.S. Department of Health and Human Services. The funding is made possible through the bipartisan Coronavirus Aid,

Relief, and Economic Security (CARES) Act, the Paycheck Protection Program and Health Care Enhancement Act.

134. There is a direct and indirect pipeline correlation of federal funding through the U.S. Department of Health and Human Services by and through the HHS Administration and Social Security Administration to assisted living facilities that include Defendant Belvedere.

135. Defendant Belvedere is supposed to comply with the following federal requirements to participate in Medicare and Medicaid. It has not in the instant matter.

136. Under federal nursing home regulations, nursing homes must:

- Have sufficient nursing staff. (42 CFR §483.30)
- Conduct initially a comprehensive and accurate assessment of each resident's functional capacity. (42 CFR §483.20)
- Develop a comprehensive care plan for each resident. (42 CFR §483.20)
- Prevent the deterioration of a resident's ability to bathe, dress, groom, transfer and ambulate, toilet, eat, and to communicate. (42 CFR §483.25)
- Provide, if a resident is unable to carry out activities of daily living, the necessary services to maintain good nutrition, grooming, and personal oral hygiene. (42 CFR §483.25)
- Ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities. (42 CFR §483.25)
- Ensure that residents do not develop pressure sores and, if a resident has pressure sores, provide the necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing. (42 CFR §483.25)
- Provide appropriate treatment and services to incontinent residents to restore as much normal bladder functioning as possible. (42 CFR §483.25)
- Ensure that the resident receives adequate supervision and assistive devices to prevent accidents. (42 CFR §483.25)
- Maintain acceptable parameters of nutritional status. (42 CFR §483.25)
- Provide each resident with sufficient fluid intake to maintain proper hydration and health. (42 CFR §483.25)
- Ensure that residents are free of any significant medication errors. (42 CFR §483.25)
- Promote each resident's quality of life. (42 CFR §483.15)
- Maintain dignity and respect of each resident. (42 CFR §483.15)
- Ensure that the resident has the right to choose activities, schedules, and health care. (42 CFR §483.40)
- Provide pharmaceutical services to meet the needs of each resident. (42 CFR §483.60)
- Be administered in a manner that enables it [the nursing home] to use its resources effectively and efficiently. (42 CFR §483.75)
- Maintain accurate, complete, and easily accessible clinical records on each resident. (42 CFR §483.75)

137. On August 20th 2020 Samuel Kleinbart filed a complaint with the NYC Board of Health Department of Adult Protective Services (or “APS”) Assisted Living complaint line against The Belvedere regarding the safety of Harry Kleinbart.

138. APS told Samuel Kleinbart that an immediate investigation will commence and that Samuel will be contacted with the results at the completion of the investigation.

139. To date, five months later, no results were given to Samuel Kleinbart despite his asking numerous times for updates. In addition, no action was taken by APS for the protection of Harry Kleinbart.

140. Samuel Kleinbart contacted the Kings County Ombudsman’s office several times regarding the safety of Harry Kleinbart until he received a call back.

141. Upon being called back, the agent from the Ombudsman’s office told Samuel that his message has been transferred to a different agent and that Samuel should call that agent.

142. Samuel called the other agent multiple times but did not get through. He left multiple messages but the agent failed to return the calls.

143. On November 7th 2020 Samuel Kleinbart spoke with his father Harry Kleinbart over the phone. Harry Kleinbart told Samuel Kleinbart that he wants to leave the Belvedere. At the time of this conversation Harry Kleinbart was talking clearly and cognitively.

144. On November 28th 2020 Samuel Kleinbart spoke again with his father Harry over the phone and Harry was crying to Samuel that he was desperate to leave The Belvedere.

145. From Harry’s tone of voice, Samuel realized that Harry Kleinbart’s health had drastically declined since three (3) weeks earlier on November 7th 2020.

146. On November 30th 2020 Samuel Kleinbart called the NY State Ombudsman’s office again, this time leaving an urgent message.

147. On December 1st 2020 Michael Fuller of the Ombudsman's office returned the call to Samuel Kleinbart, but failed to properly investigate the matter.

148. Solomon wrote an email to Samuel Kleinbart on 11/1/2020 that even in the event that Harry would leave The Belvedere and be admitted to Northern Metropolitan, Solomon Kleinbart, together with his brother Abraham Kleinbart and his sister Rivka Steinberg and 'greater family' insist on continuing a very active role in the care of Harry Kleinbart.

149. In this email, Solomon makes note of Harry Kleinbart's "siblings" and "greater family" but makes no mention of the fact that Harry has two (2) adult children, Steven and Samuel Kleinbart, each married and with children of their own, as being relatives of Harry, or that they have any right to be involved with their father Harry Kleinbart's care.

150. Solomon has demonstrated on multiple occasions his desire to maintain control over Harry's, Steven's and Samuel's lives. By doing this, Solomon has violated all Plaintiffs' rights to life, liberty and pursuit of happiness.

151. This desire for Solomon to have control over Harry's life was and continues to be in direct opposition of Harry's requests to which Harry told his children Steven and Samuel before signing his Power Of Attorney and Health Care Proxy on 7/21/2020 as well as on other occasions that Harry does not want Solomon Kleinbart or Rivka Steinberg to be in control of his life. Only Harry's two children Steven Kleinbart and Samuel Kleinbart and their spouses shall have the right, if needed, to assist him in his care.

152. Solomon wrote to Samuel in an email dated November 2nd 2020 that he and Samuel had not spoken together in over six (6) months, thereby denying all his assurances made during July and August of 2020 that Solomon would allow Harry to leave the Belvedere.

153. Defendant Solomon Kleinbart and The Belvedere, were all summoned to a Rabbinical court but refused to come. Defendants were summoned three (3) times in accordance with Jewish law and refused to come all three (3) times, when upon the Rabbinical court granted permission for Plaintiffs to sue Defendants in a secular court.

154. The parties to be enjoined acted in bad faith and the injury causing behaviors were not innocent mistakes.

155. It is therefore in Harry's best interest for the issuance of injunctive relief to protect him from future irreparable harm.

156. The irreparable harm Harry Kleinbart is likely to suffer as a result of being abused and neglected by Defendants is that he will likely: continue to endure physical pain and not be allowed to receive proper therapy to relieve the pain; continue to endure emotional distress as he stated that he feels like a prisoner at The Belvedere; become permanently immobile; require urological surgeries; acquire several unforeseen medical complications, require frequent hospitalizations and continuously deteriorate, all of which may result in his premature death.

157. All this irreparable harm can be avoided through the issuance of this injunction.

158. No legal remedy exists to save Harry Kleinbart from this immediate and irreparable harm other than through injunctive relief to have him released from The Belvedere and from the care of Solomon, and be admitted to the Northern Metropolitan and put under the care of his children Steven and Samuel and their spouses.

159. Harry Kleinbart will likely continue to suffer irreparable harm even if he were to leave The Belvedere and be admitted to the Northern Metropolitan, unless all Defendants be enjoined from the continued care of Harry and that instead, Harry be placed under the care of his children Steven and Samuel and their spouses.

160. In addition, Harry Kleinbart will likely continue to suffer irreparable harm unless any and all of his personal possessions, documents, medical records and financial records will be transferred over from Defendants to Steven and Samuel Kleinbart and their spouses, for as long as Defendants retain any of the aforementioned items, Defendants will likely continue to control Harry's life and thereby continue to cause him irreparable harm.

161. Additionally, Harry's civil rights have been and continue to be violated by Defendants. Based on such previous conduct, his civil rights are therefore likely to continue being violated by Defendants.

162. The effect of this injunction will effectively discontinue all forms of abuse, neglect, civil rights violations and future irreparable harm to Harry and denial of this injunction will result in furtherance of abuse, neglect, civil rights violations and irreparable harm to Harry.

163. No harm or hardship will befall any of the Defendants listed herein or any of their agents as a result of Harry Kleinbart leaving The Belvedere.

164. No harm or hardship will befall any of the Defendants listed herein or any of their agents as a result of Harry Kleinbart discontinuing to be under the care of Solomon Kleinbart.

165. The issuance of this injunction is in public interest as it will promote social justice for senior citizens.

166. Harry Kleinbart is likely to succeed on the merits as he is completely cognizant and has the legal rights to sign himself out of The Belvedere and into the Northern Metropolitan. In addition, Harry's children possess a valid Power Of Attorney and Health Care Proxy.

167. A suit is still needed to redress the damages caused by Defendants so that this injunction does not accomplish the entire purpose of the suit.

FIRST CAUSE OF ACTION

**Violation of US Constitution Civil Rights Amendment I, Freedom of Religion,
Freedom of Speech, Freedom of Association; 42 U.S.C. §1983**

168. Plaintiffs repeat the foregoing paragraphs as if set forth at length.

169. Plaintiff Harry Kleinbart was denied the right to speak to his children over the phone and in person.

170. Furthermore, Harry was denied the right to associate and observe his religion and religious holidays with his children and grandchildren.

171. Plaintiffs Steven and Samuel Kleinbart were denied the right to speak to their father Harry Kleinbart over the phone and in person.

172. Furthermore, Steven and Samuel were denied the right to associate with and observe their religion and religious holidays with their father Harry Kleinbart.

173. Plaintiff Harry Kleinbart was deprived of appropriate medical care that is defined under state and federal guidelines, in order for Defendants Belvedere and Steven Schonberger to obtain Medicare, Medicaid, federal and state funding. This was a violation of Plaintiff Harry Kleinbart's right to associate with the facility of his choice.

174. This violated all Plaintiffs' Civil Rights under 42 U.S.C. §1983.

175. The actions aforesaid that were done by Defendants were intentional and were intended to deprive Plaintiffs of their rights, specifically rights to life, liberty, and happiness.

176. All Defendants were acting under color of state laws, deliberately, knowingly, willfully, wantonly and repeatedly harassed, threatened, illegally restrained and punished Plaintiff Harry Kleinbart by imprisonment in Defendant Belvedere's assisted living facility, without giving Harry proper medical services in violation of federal and state laws, that violated

Plaintiff Harry Kleinbart's guaranteed fundamental rights under the Civil Rights Act of 1871, 42 U.S.C. §1983, rendering all Defendants liable in damages to Plaintiffs in law and equity.

177. As a result of all Defendants' actions, Defendant Belvedere should have all federal and state funding rescinded permanently.

178. Defendants Belvedere and Schonberger must have their right to Medicare and Medicaid funding revoked.

179. Therefore, Defendants Belvedere, Steven Schonberger (CEO of Belvedere), Crystal Doe, Administrator for Defendant Belvedere [name to be determined upon discovery], and Solomon Kleinbart, and each of them, are jointly and severally liable to Plaintiffs Harry, Steven and Samuel Kleinbart for Civil Rights Violations under the First Amendment and under 42 U.S.C. §1983.

SECOND CAUSE OF ACTION

Violation of U.S. Constitution, Amendment IV; False Imprisonment; 42 U.S.C. §1983

180. Plaintiffs repeat the foregoing paragraphs as if set forth at length.

181. Defendants Solomon Kleinbart, Belvedere, Steven Schonberger, Crystal Doe and others yet unnamed, acted under color of law, withheld, obstructed and/or tampered with Plaintiff Harry Kleinbart's personal documents, medical papers and other papers and effects in an illegal seizure. Solomon has control over Harry Kleinbart's documents, refuses to give them up, and told Defendant Belvedere not to give them to Plaintiffs.

182. All Defendants have unlawfully restrained and seized Plaintiff Harry Kleinbart by unlawfully and falsely keeping him locked up in Defendant Belvedere assisted living facility. As a result of this illegal seizure and false imprisonment, Plaintiff Harry Kleinbart's mobility worsened to the point that he is not able to walk.

183. The forcible seizure of Plaintiff Harry Kleinbart by said Defendants was conducted by a policy, practice and custody of conducting an illegal seizure and false imprisonment of a person based solely on false allegations leveled by Defendant Solomon Kleinbart, with the aiding and abetting of Defendants Belvedere, Schonberger and Crystal Doe, Administrator for Belvedere.

184. All Defendants have violated the Fourth Amendment of the United States Constitution.

185. This illegal seizure and false imprisonment of Plaintiff Harry Kleinbart is in direct contravention of federal and state laws for supporting and funding assisted living facilities, including but not limited to Medicare and Medicaid.

186. The acts of all Defendants were done intentionally, maliciously, recklessly, willfully, wantonly, and were designed to deprive Plaintiff Harry Kleinbart and other Plaintiffs of their rights in an effort to coerce, restrain and kidnap Plaintiff Harry Kleinbart to falsely imprison him in Defendant Belvedere assisted living facility to collect as much federal and state funding as possible.

187. As a result of all Defendants' actions, Defendant Belvedere should have all federal and state funding rescinded permanently. Defendants Belvedere and Schonberger must have their right to Medicare and Medicaid funding revoked.

188. The acts of all Defendants violated Plaintiffs' guaranteed fundamental rights under the Fourth Amendment of the United States Constitution, and the Civil Rights Act of 1871, 42 U.S.C. §1983, rendering all Defendants liable in damages to Plaintiffs in law and equity.

189. As a result of the wrongful actions of all Defendants, and each of them, all Defendants are jointly and severally liable to Plaintiffs Harry, Steven and Samuel Kleinbart for Civil Rights violations under the Fourth Amendment and under 42 U.S.C. §1983.

THIRD CAUSE OF ACTION

Violation of U.S. Constitution, Amendment XIV; 42 U.S.C. §1983

190. Plaintiffs repeat the foregoing paragraphs as if set forth at length.

191. All Defendants committed deprivations of life and liberty against Plaintiff Harry Kleinbart, to allow him to live as a human being under his own decisions and get proper medical treatment as needed. This constitutes false imprisonment.

192. Defendant Solomon Kleinbart is in complete control of Harry Kleinbart's life and does not let Harry make his own decisions as to where to go, where to live, whom to visit and/or whom to associate with.

193. Plaintiff Harry Kleinbart has been forced into a wheelchair when he could have been walking, thus depriving him of life, liberty and happiness as well as cutting him off from society. This constitutes false imprisonment.

194. Defendants have further violated Plaintiff Harry Kleinbart's fundamentally secured rights under the 1st, 4th and 14th Amendments Rights to Associate by denying him of his children, Steven and Samuel Kleinbart and his grandchildren to visit him, and keeping Plaintiff Harry Kleinbart unlawfully restrained and falsely imprisoned.

195. By all Defendants unlawfully restraining Plaintiff Harry Kleinbart, it is now kidnapping. Kidnapping is considered a false imprisonment. It also constitutes physical assault and battery.

196. This illegal seizure, kidnapping and false imprisonment of Plaintiff is in direct contravention of federal and state laws for supporting and funding assisted living facilities, including but not limited to Medicare and Medicaid.

197. The acts of all Defendants were done intentionally, maliciously, recklessly, willfully, wantonly, and were designed to deprive Plaintiff Harry Kleinbart and other Plaintiffs of their rights in an effort to coerce, restrain and kidnap Plaintiff Harry Kleinbart to keep him in the Defendant Belvedere assisted living facility to collect as much federal and state funding as possible.

198. As a result of all Defendants' actions, Defendant Belvedere should have all federal and state funding rescinded permanently. Defendants Belvedere and Schonberger must have their right to Medicare and Medicaid funding revoked.

199. The acts of all Defendants violated the Plaintiffs' guaranteed fundamental rights under the First, Fourth, and Fourteenth Amendments of the United States Constitution, and the Civil Rights Act of 1871, 42 U.S.C. §1983, rendering all Defendants liable in damages to Plaintiffs in law and equity.

200. As a result of the wrongful actions of all Defendants, and each of them, all Defendants are jointly and severally liable to Plaintiffs Harry, Steven and Samuel Kleinbart for Civil Rights violations under the Fourth Amendment and Fourteenth Amendment and under 42 U.S.C. §1983.

FOURTH CAUSE OF ACTION

Intentional/Negligent Infliction of Emotional Distress; Battery; Negligence

201. Plaintiffs repeat the foregoing paragraphs as if set forth at length.

202. Defendant Solomon Kleinbart at all times herein has acted as Plaintiff Harry Kleinbart's caregiver through which he put Harry into Defendant Belvedere and takes him to medical appointments. Therefore, Solomon is in the category of a caregiver.

203. To prove negligence, one must prove that a) the defendant was a valid caregiver according to criteria and b) that he had an obligation to prevent or take control of the event and c) failed to do so, d) allowing the victim to get injured, e) and that the intention was negligent and the f) damage was proximate.

204. Defendant Solomon meets the criteria as Harry Kleinbart's caregiver (a) as stated so by Crystal Doe, Administrator of the Belvedere that "Solomon signs him in Solomon signs him out," as well as took him to appointments. This is evident as well from the email Solomon sent Plaintiff Samuel Kleinbart on November 1st 2020 that Solomon wants to continue to have an active role/control over Harry Kleinbart's care, (b) as the primary caregiver, Solomon accepted upon himself responsibility to assure Harry gets proper care, (c) Solomon refused to help Harry use his walker, stopped him from getting therapy and from learning how to walk and stopped him from getting proper medical treatment for incontinence, (d) Thus allowing Harry to degenerate to the point that he became immobile and developed incontinence and muscular spasms (e) Solomon acted out of neglect as he was informed by Samuel what damage Harry would incur as a direct result of Solomon's negligence to take proper action, (f) damage incurred was a direct and/or proximate result of Solomon's negligence as Harry was able to walk when he had the walker as well as his walking improved and regained stability. Had Harry been allowed to go to the Northern Metropolitan, he would have been walking by now.

205. Plaintiff Harry Kleinbart was damaged as a direct result of these actions. As a result of the negligence caused by Defendants Solomon Kleinbart, Belvedere, Steven

Schonberger and Crystal Doe, Plaintiff Harry Kleinbart became wheelchair-bound which commenced degenerative diseases of urinary incontinence and muscle spasms. In addition, Solomon provided Harry with an inferior wheelchair which directly exacerbated his degenerative condition.

206. Proximate causation can be found where Plaintiff Samuel Kleinbart clearly explained to Defendant Solomon over the phone that Harry Kleinbart may become permanently immobile because of Solomon's actions. Also, Harry Kleinbart was able to walk on his own in September 2019.

207. Solomon Kleinbart refused to follow common sense to have Harry evaluated and/or purchase a proper walker and wheelchair for Harry Kleinbart. Instead, Solomon insisted that these decisions be made by doctors and that Harry undergo extensive hospital testing. At the same time, Solomon refused to take Harry to these doctors or hospitals and refused to allow Harry to be admitted to Northern Metropolitan for necessary therapy. This constitutes neglect caused by Defendants Solomon Kleinbart, the Belvedere, Steven Schonberger, Crystal Doe (Administrator of the Belvedere), and others yet unnamed.

208. Plaintiff Harry Kleinbart was owed a duty of care from all Defendants. Defendants breached that duty of care by not aiding and assisting him in walking properly and sending him to Northern Metropolitan where he would receive necessary care. This endangered and is endangering Plaintiff Harry Kleinbart's safety and life. This caused Plaintiff Harry Kleinbart, and his children Plaintiffs Steven and Samuel Kleinbart emotional distress.

209. The unlawful restraint and/or kidnapping, and false imprisonment of Plaintiff Harry Kleinbart constitutes an assault and battery since he was forcibly removed and restrained from his sons, Steven and Samuel, and family.

210. The actions aforesaid were intentional and were intended to produce and did produce emotional distress. Alternatively, the actions were recklessly in disregard of a high probability that emotional distress would follow.

211. As a result of all Defendants' actions, Defendant Belvedere should have all federal and state funding rescinded permanently. Defendants Belvedere and Schonberger must have their right to Medicare and Medicaid funding revoked.

212. The acts of all Defendants violated the Plaintiffs' guaranteed fundamental rights under the Civil Rights Act of 1871, 42 U.S.C. §1983, rendering all Defendants liable in damages to Plaintiffs in law and equity.

213. As a result of the wrongful actions of all Defendants, and each of them, all Defendants are jointly and severally liable to Plaintiffs Harry, Steven and Samuel Kleinbart.

FIFTH CAUSE OF ACTION
42 U.S.C. §1983 – Equal Protection

214. Plaintiffs repeat the foregoing paragraphs as if set forth at length.

215. As described more fully above, Defendants, all while acting individually, jointly, and in conspiracy, as well as under color of law and within the scope of their employment, denied Plaintiff Harry Kleinbart equal protection of the law in violation of his constitutional rights.

216. Specifically, these Defendants actively participated in, or personally caused, misconduct in terms of abusing Plaintiff Harry Kleinbart by coercing him, unlawfully restraining him and/or kidnapping him, and unlawfully falsely imprisoning him at the Belvedere, which he does not want to be at.

217. Said misconduct is motivated by power and control by Defendant Solomon Kleinbart, and motivated by money and greed by Defendants Belvedere, Schonberger and Crystal Doe. It constitutes purposeful discrimination against the aged and disabled.

218. As a result of these violations of New York and Federal assisted living laws, as well as violations of Medicare and Medicaid laws, Plaintiff Harry Kleinbart has suffered injuries and is suffering ongoing injuries, including but not limited to emotional distress, as is more fully alleged above.

219. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiff Harry Kleinbart's constitutional rights.

220. As a result of all Defendants' actions, Defendant Belvedere should have all federal and state funding rescinded permanently. Defendants Belvedere and Schonberger must have their right to Medicare and Medicaid funding revoked.

221. The acts of all Defendants violated Plaintiff Harry Kleinbart's guaranteed fundamental rights under the Civil Rights Act of 1871, 42 U.S.C. §1983, rendering all Defendants liable in damages to Plaintiff Harry Kleinbart in law and equity.

222. As a result of the wrongful actions of all Defendants, and each of them, all Defendants are jointly and severally liable to Plaintiffs Harry, Steven and Samuel Kleinbart.

SIXTH CAUSE OF ACTION

Conspiracy to violate Constitutional Rights & Civil Rights; 42 U.S.C. §1985(3)

223. Plaintiffs repeat the foregoing paragraphs as if set forth at length.

224. As described more fully above, each of the Defendants conspired, directly or indirectly, for the purpose of depriving Plaintiffs of Equal Protection of the law.

225. In so doing, Defendants took actions in furtherance of this conspiracy, causing injury to Plaintiffs.

226. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of Plaintiffs.

227. The misconduct described in this Count was undertaken pursuant to the policy and practice of Defendants Belvedere, Schonberger and Crystal Doe in the manner described more fully in preceding paragraphs.

228. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiffs' constitutional rights.

229. As a result of all Defendants' actions, Defendant Belvedere should have all federal and state funding rescinded permanently. Defendants Belvedere and Schonberger must have their right to Medicare and Medicaid funding revoked.

230. The acts of all Defendants violated Plaintiffs' guaranteed fundamental rights under the Civil Rights Act of 1871, 42 U.S.C. §1983, 42 U.S.C. §1985(3), rendering all Defendants liable in damages to Plaintiffs in law and equity.

231. As a result of the wrongful actions of all Defendants, and each of them, all Defendants are jointly and severally liable to Plaintiffs Harry, Steven and Samuel Kleinbart.

PRAYER FOR RELIEF:

WHEREFORE, Plaintiffs respectfully request that judgment be entered:

1. Issuing a temporary restraining order enjoining all Defendants, their officers, employees, successors, attorneys and agents and all those in active concert or participation with

them from detaining Harry Kleinbart from permanently leaving his current residence at The Belvedere and from preventing him from being admitted to the Northern Metropolitan, until a hearing is had on Plaintiffs' application for a preliminary injunction;

2. Enjoining all Defendants, their officers, employees, successors, attorneys and agents and all those in active concert or participation with them from taking any active role in the continued care and/or decision making of Harry Kleinbart as it constitutes unlawful restraint, coercion, and false imprisonment;

3. Mandating that only Harry Kleinbart's children Steven and Samuel Kleinbart and their spouses Sarah and Shulamit C. Kleinbart respectfully be allowed to assist and/or take any active role in the continued care and/or decision making on behalf of Harry Kleinbart;

4. Enjoining all Defendants from detaining any and all of Harry Kleinbart's personal possessions, documents, medical records and/or financial records from Harry Kleinbart and from his children Steven and Samuel Kleinbart;

5. Mandating that all assets, income, bank accounts and any and all other financial resources of Harry Kleinbart be permanently transferred to himself and/or to his children Steven and Samuel Kleinbart;

6. Requesting a hearing for a preliminary injunction;

7. Requesting the issuance of a Writ of Habeas Corpus for Harry Kleinbart to appear in court and testify for himself;

8. Award Plaintiff Harry Kleinbart and/or Plaintiffs Steven and Samuel Kleinbart the cost of bringing this action;

9. Compensatory damages in the amount of \$1,000,000.00 for physical and emotional pain and suffering actually and proximately caused by all Defendants, individually, jointly and severally;

10. Punitive damages for pain and suffering in the amount of \$5,000,000.00 to punish Defendants, to make examples of them, and deter such future conduct, in amounts deemed sufficient to accomplish the purpose that no senior citizen or disabled citizen ever be subjected to this type of deleterious behavior and acts by Defendants;

11. Special damages of \$1,000,000.00 to compensate for past and future money loss by Plaintiffs, including but not limited to lost business opportunities and medical expenses incurred as a direct and proximate result of Defendants' conduct;

12. Any and all pre-judgment interest;

13. Reasonable attorney fees, if any;

14. Grant any additional equitable relief as the court may determine to be just and proper;

JURY DEMAND

Plaintiffs demand a Trial by Jury on all issues so triable.

Dated: 1/25/21

Respectfully submitted,

Harry Kleinbart

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5110 19th Ave #203
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718-223-1800 (front desk for room phone)

MOSHE COHEN
NOTARY PUBLIC, State of New York
No. 01CO6364720
Qualified in Kings County
Commission Expires Sept. 18, 2021 21

Dated: 1/25/2021

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Dated: 1/15/2021

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Fred Phillip Schwartz
FRED PHILLIP SCHWARTZ, Attorney at Law
NOTARY PUBLIC-STATE OF OHIO
My Commission Has No Expiration Date
Section ORC 147.03